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**Cc:** Capacasa, Jon[Capacasa.jon@epa.gov]; Pomponio, John[Pomponio.John@epa.gov]; Shamet, Stefania[Shamet.Stefania@epa.gov]; White, Terri-A[White.Terri-A@epa.gov]; Seneca, Roy[Seneca.Roy@epa.gov]; Smith, Bonnie[smith.bonnie@epa.gov]; Burns, Francis[Burns.Fran@epa.gov]  
**From:** Garvin, Shawn  
**Sent:** Fri 2/14/2014 3:23:03 AM  
**Subject:** Re: WVDEP at legislature today

Thx

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**From:** Ferrell, Mark  
**Sent:** Thursday, February 13, 2014 9:29:48 PM  
**To:** Garvin, Shawn  
**Cc:** Capacasa, Jon; Pomponio, John; Shamet, Stefania; White, Terri-A; Seneca, Roy; Smith, Bonnie; Burns, Francis  
**Subject:** WVDEP at legislature today

Shawn, a variety of folks from DEP, including Scott Mandirola and Kristin Boggs, were grilled by lawmakers this afternoon in Senate Judiciary. ~Mark

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February 13, 2014

**DEP on hot seat over chemical tanks**

Lawmakers question exemptions in proposed legislation

CHARLESTON, W.Va. -- Lawmakers on Thursday grilled the Tomblin administration about more than 20 categories of chemical storage tanks that would be exempted from key safety provisions of legislation proposed in response to the Jan. 9 leak that contaminated drinking water for 300,000 West Virginians.

Department of Environmental Protection officials struggled at times to explain the reasons for some of the exemptions, even though the exemptions generally mirror those contained in Gov. Earl Ray Tomblin's bill.

By Ken Ward Jr.

The Charleston Gazette

CHARLESTON, W.Va. -- Lawmakers on Thursday grilled the Tomblin administration about

more than 20 categories of chemical storage tanks that would be exempted from key safety provisions of legislation proposed in response to the Jan. 9 leak that contaminated drinking water for 300,000 West Virginians.

Department of Environmental Protection officials struggled at times to explain the reasons for some of the exemptions, even though the exemptions generally mirror those contained in Gov. Earl Ray Tomblin's bill.

DEP officials also conceded that, while other state programs cover some of the tank facilities targeted for exemption, those other programs don't necessarily mandate the same inspections the new bill would require for the above-ground chemical tanks it would cover.

Kristin Boggs, the DEP's general counsel, said she and a large contingent of other agency officials didn't attend the afternoon House Judiciary Committee meeting to advocate for the exemptions.

"I can't defend or justify," Boggs said. "We're happy to explain what these exemptions mean. We aren't here to defend the exemptions."

Judiciary Committee members were reviewing a Senate-passed version of the chemical tank bill that was modified Wednesday by the House Health Committee. Before it reaches the floor, the bill also has to make it through the House Finance Committee.

Judiciary Chairman Tim Manchin, D-Marion, scheduled a herd of various DEP officials to appear before lawmakers to explain the purpose of language exempting a wide variety of storage tanks from DEP permitting and inspection requirements.

The Senate-passed version is similar to Tomblin's bill, which also contained a long list of exemptions. The governor's list was very similar to exemptions proposed by lawyers and lobbyists following an industry-only meeting the Governor's Office hosted before the legislation was introduced.

Among the exemptions are several that would protect chemical storage tanks at coal mines and natural gas production sites from permitting and inspections required by the new bill.

Lewis Halstead, a deputy director of the DEP Division of Mining and Reclamation, reminded lawmakers that his agency is mandated under state strip-mining laws to periodically inspect all coal operations. However, those inspections, Halstead said, do not include testing the structural integrity of chemical storage tanks -- including those at preparation plants that might contain coal-cleaning chemicals such as Crude MCHM.

James Martin, director of the DEP's Office of Oil and Gas, said his agency likewise doesn't do tank integrity testing -- and isn't required to conduct periodical natural gas site inspections.

"There are times when those sites are inspected," Martin said. "There is not a routine or mandatory inspection frequency. We don't have that in our rule or statute."

Martin was unable to explain another oil and gas exemption that would cover "liquid traps or associated gathering lines related to oil or gas production and gathering operations."

Lawmakers asked about another exemption that would cover "an indoor tank located inside a building resting on or elevated above an impermeable floor surface from which a release would be entirely contained in a secondary containment structure or not escape through other means."

"I'm not sure where this exemption came from," Boggs said.

The indoor tank exemption was not included in the governor's bill, but it was part of the list of exemptions proposed privately by the West Virginia Manufacturers Association in an email message to Boggs. Members of the Natural Resources Committee added it in the Senate.

DEP officials noted that another exemption, for pesticide tanks, would cover facilities regulated by the state Department of Agriculture. However, in a May 2009 report, the U.S. Chemical Safety Board noted that those West Virginia rules did not mandate the use of a strict industry standard for tank integrity and inspections.

While the legislation under consideration in the wake of the Freedom Industries' leak would mandate new construction, integrity and maintenance standards for above-ground chemical storage tanks, it would leave it to the DEP to write those standards through a separate rule.

Some lawmakers questioned DEP officials about why the agency didn't take action before the MCHM leak into the Elk River. In response, Boggs noted that the political atmosphere in the Legislature isn't welcoming to new environmental regulations, even if they are meant to prevent a disaster like the chemical leak.

"Absent this type of event, my fear is, if we had brought it over here, we would have been screamed out of the Capitol," Boggs said. She said lawmakers would have complained of DEP "mission creep" or "overreach."

Scott Mandirola, director of the DEP's Division of Water and Waste Management, explained to lawmakers that water-pollution laws leave much of the compliance up to self-reporting by industries that hold discharge permits. When companies don't file the required reports, Mandirola said, that failure is likely to prompt a closer look by the DEP, including a site inspection.

However, records from the DEP indicate that Freedom Industries failed several times to file its required discharge-monitoring reports. Those same records do not include records to indicate if the DEP followed up on those failures with a site inspection.

Boggs said the DEP does support language, added in the House Health Committee, that would require an agency inventory of all above-ground storage tanks, whether they are covered by an exemption from the bill's permit and inspection requirements or not.

"[The] DEP wants all of that information," Boggs said. "We want an inventory of every tank."

Delegate Barbara Fleischauer, D-Monongalia, suggested that perhaps lawmakers should strip the exemptions from the bill. The DEP could conduct its inventory first, Fleischauer said, and lawmakers could allow the agency to write exemptions later, based on what the inventory shows.

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